Jitendra & Ors. vs. State of Rajasthan
(S.B.Criminal Revision Petition No.800/04)

Dated :- 15th January, 2007.

HON'BLE MR.JUSTICE G.S.SARRAF

Mr. Sandeep Mehta, for the petitioners.
Mr. S.N.Tiwari, Public Prosecutor.

BY THE COURT:-

The petitioners have filed this revision petition against the order of Additional Sessions Judge No.1, Chittorgarh dated 17.9.2004 whereby he allowed the revision petition filed by the State of Rajasthan against the order dated 4.10.2002 passed by Chief Judicial Magistrate, Chittorgarh discharging the petitioners for offences u/ss. 17-A(f), 17-B(d), 18(a)(i), 27(b)(i) and 27(c) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Act.).

Briefly stated the facts of the case are that the Drugs Inspector, Chittorgarh on 4.2.1986 took sample of Oxyphenbutazone tablets I.P. from Navjat Clinic, Nimbahera owned by Dr.Hasanand S.Dasani. The tablets were sealed and forwarded to the Central Indian Pharmacopoeia Laboratory, Ghaziabad for test and analysis. According to the report of the Laboratory, the sample did not conform to I.P. in that it was adulterated with phenylbutazone. It is alleged in the complaint that Dr.Hasanand

S.Dasani purchased the said tablets from M/s. Lakhmichand & Sons, Udaipur and M/s. Lakhmichand & Sons, Udaipur had purchased it from M/s. Rajdeep Pharmaceuticals, Bombay. Kent Pharmaceuticals, Bombay was the manufacturer. The Drugs Inspector after investigation submitted a complaint against the petitioners and other co-accused persons in the Court of Chief Judicial Magistrate, Chittorgarh. Statement of Drugs Inspector Chandra Bhushan Gupta-P.W.1 was recorded for the purpose of pre-charge evidence. In the meantime, one of the accused of the case Narendra Singh, Director, M/s Kent Pharmaceuticals, Bombay challenged the proceedings against him before this Court by way of S.B.Criminal Miscellaneous Petition No.679/99 and this Court by its order dated 9.12.1999 proceeded to quash the proceedings against Narendra Singh on the ground that there was no allegation in the complaint against him that he was incharge of and also responsible for the conduct of the business of the company. After hearing both the parties on the question of framing of charges, learned Chief Judicial Magistrate came to the conclusion that there was no material on record to show that the petitioners were active partners of the concerned firms and therefore the learned Chief Judicial Magistrate discharged the petitioners by order dated 4.10.2002. Aggrieved by the above order, State of Rajasthan filed a revision petition and the learned Additional Sessions Judge No.1, Chittorgarh by impugned order dated 17.9.2004 allowed the revision petition and set aside the order of the learned Chief Judicial Magistrate dated 4.10.2002. The petitioners have now preferred this

revision petition against the order of learned Additional Sessions Judge, No.1, Chittorgarh dated 17.9.2004.

Shri Sandeep Mehta, learned counsel for the petitioners has submitted that the petitioner no. 1 Jitendra is said to be a partner of Rajdeep Pharmaceuticals, Bombay and the petitioner Shanti Devi is said to be a partner of M/s Lakhmichand & Sons, Udaipur but there is no allegation either in the complaint or in the statement of the complainant Chandra Bhushan Gupta-P.W.1 that the two petitioners were incharge of and responsible to the respective firms for the conduct of business. He has submitted that earlier by order dated 9.12.1999 this Court has quashed the proceedings against the co-accused Narendra Singh, Director of Kent Pharmaceuticals, Bombay on the same ground and the case of the present petitioners is not distinguishable from that of the co-accused Narendra Singh. He therefore prays that the order of the revisional court be set aside and the order of the Chief Judicial Magistrate be restored as regards the petitioners.

Learned Public Prosecutor has supported the order of the revisional Court dated 17.9.2004.

A perusal of the complaint and the statement of Drugs Inspector Chandra Bhushan Gupta makes it clear that there is no allegation against the petitioners that they were the incharge of and responsible to the firms for the conduct of business of the firms. Learned Public Prosecutor has also failed to show any reference to the petitioners that they were

incharge of and responsible for the conduct of the business of the firms.

A partner of a firm is liable to be prosecuted for an offence committed under the Act by a firm if he was incharge of and was responsible to the firm in the conduct of the business of the firm or if there is any allegation that the offence was committed with the consent or connivance of or was attributable to any neglect on the part of the partner concerned. A person does not become liable simply because he is a partner in the firm. In the present case, there is merely a bald statement in the complaint that the petitioners were partners in the respective firms and there is no allegation to indicate even prima facie that they were incharge of and responsible to the respective firms for the conduct of business of the firms. In these circumstances, in my opinion, continuation of proceedings against the petitioners would be an abuse of the process of the Court. I am supported by 1998 S.C.C.(Cri.) 1315 and 1981 S.C.C.(Cri.) 453.

In view of the above discussion, the revision petition is allowed, the order dated 17.9.2004 of the revisional Court with respect to the petitioners Jitendra and Smt. Shanti Devi is set aside and the order of discharge dated 4.10.2002 of the Chief Judicial Magistrate, Chittorgarh regarding the present petitioners only is restored.

(G.S.SARRAF),J.